In the Supreme Court of Pennsylvania.

At Nisi Prius, before Strong, J. March, 1858.

COAKLEY VS. THE NORTH PENNSYLVANIA RAILROAD COMPANY.

1. It is a clear and general principle that the principal is liable for the negligence of his agent.

2. An action under our act of 1855, (Brightly's Digest, p. 1138,) providing a remedy in case of death by violence, or negligence, can only be maintained by the persons enumerated in the act itself, viz: the husband, the widow, the parents, the children.

3. In estimating the damages, the injury done to the party living, caused by the death, is the measure; and no compensation can be claimed for the suffering of the decedent.

4. No compensation can be allowed for the distress and anguish which the plaintiff may be supposed to have suffered; but any expenses to which the plaintiff may have been subjected, should be included in the verdict.

5. Suggestions as to the pecuniary value of life; estimable value of life, must be determined by the jury.

6. Exemplary damages should not be given, unless the defendant has been guilty of fraud, oppression, gross negligence, malice, &c.

This was an action to recover damages against the defendants for the life of the daughter of the plaintiff. The said child, (Catharine Coakley,) lost her life on the morning of July 17th, 1856, in the deplorable accident on the North Pennsylvania Railroad, which occurred on that day. The child intended to go on an excursion with her Sunday School companions, who were going on an excursion to a place called Fort Washington, some twelve or fifteen miles from Philadelphia. The train of cars in which the child was riding, reached in safety a point upon the line of the railroad, about two miles from the place of their destination. There the train in which Catharine Coakley was seated, came in collision with another train of the defendants, and in consequence Catharine was fatally injured. She survived the accident until the morning of the next day.

For the plaintiff, Messrs. *S H. Perkins* and *Wm. L. Hirst.*

For the defendants, Messrs. *St. George T. Campbell* and *Geo. M. Wharton.*

The following charge was delivered to the jury by

STRONG, J.—The cars belonged to the defendants, and they were responsible for the negligence of their agents. The defendants, then, are liable, and they are liable to the plaintiff. The question for you is, and it is the only inquiry in this cause, *what is the measure of that liability?*

In order to determine it, it becomes necessary to look at the Acts of Assembly which authorize such an action as the present to be brought. Until within a recent period, where death had ensued from the wrongful act of another, whether from violence or from negligence, no civil action could be maintained against the wrong doer, either by the personal representatives or the relatives of the deceased. I will not stop to state the reasons for this; but such was the law. And even if a suit had been commenced before the death of the party injured, it died with the party, and could not be carried on by his administrator. About twelve years since, however, a statute was passed in England, which, in that country, changed this rule of law. Since that time the example set in England has been followed by several of our sister States, and similar statutes have been passed. In 1851 the legislature of this State passed such an act, and in 1855 yet another, designating the persons who may sue. The phraseology of the English statute, that of our sister States, and our own, is slightly varied, but the purpose of them all seems to have been substantially the same. Our act of 1851, in one section, provided that where suit had been commenced by the person injured, in his lifetime, it should not die with him, but might be carried on by his executors or administrators. The next section, and the one which is the foundation of the present case, is as follows: "wherever death shall be occasioned by unlawful violence or negligence, and no suit for damages be brought by the party injured, during his or her life, the widow of any such deceased, or if there be no widow, the personal representatives may maintain

an action for, and recover, damages for the death thus occasioned." The act of 1855 takes away from the personal representatives this right to bring suit and recover damages, and allows it to the husband, widow, children or parents of the deceased, and to no other relative.

It now becomes necessary to inquire for what the legislature provided that the action should be brought. The language of the act is "damages for the death." Was it for the wrong and injury to the decedent, or the wrong and injury to the persons to whom the right of action is given? This becomes a natural inquiry in this case. For, if the action is given for the wrong and injury to the decedent, then the plaintiffs cannot recover for any expenses to which they have been subjected in consequence of the death of their child, nor for any loss of service or society, because these expenses and loss were no part of the injury done to Catharine Coakley, and she could not recover for them had she brought suit in her lifetime. If, on the other hand, the damages to be recovered are those sustained by the parent, then the sufferings and pain of the child cannot be considered, for that suffering was no part of the damages done to the parents.

Under the British statute, of which I have already spoken, the action is brought for the injury done to the relative in whose behalf the suit is given. So it is in New York, in Ohio, in Illinois, and in Indiana, and, so far as I know, wherever similar statutes are found. The acts in those States differ in words, as I have said, but their general object is one. Wherever, then, this innovation has been made upon the common law, the rule is that the damages to be recovered are those sustained by the survivor to whom the right of action is given. Our statute, though slightly differing in words from that of England and our sister States (the great difference being in its brevity) does not differ in signification. Nor does the decision of the Supreme Court in *Penna. R. R. Co.* vs. *McCloskey*, 11 Harr., 526, give to it a different construction. That was a suit brought by an administrator, and decided before the act of 1855 was passed. The question we are now considering was not involved in the case. You will notice who the persons are to whom the right of action is given for

damages for the death. They are the husband, the widow, the children, the parents. All these have by law relative rights in the person whose death has been occasioned by violence or negligence. The husband has a legal right to the services and society of his wife. The wife has a legal right to the support and protection of the husband. The children have a legal right to the support and maintenance of the parents. And the parents have a right to the services of the child. But here the act of assembly stops. No other relative can bring a suit. No other relative has any legally recognized relative rights in the decedent. Not even a brother or sister. This can hardly be accidental.

I am therefore of opinion, and I so instruct you, that in estimating the damages you should confine your attention to the damages which have been caused to the parents by the death of the child. Consequently, you cannot give damages for the pain and suffering which Catharine experienced previous to her death.

What damages, then, have the parents sustained? This is for your consideration—I can only give to you some rules by which you should be guided. I observe, then, *first*, that the damages given should not be speculative. Difficult as the task may be, it is your duty to endeavor to ascertain what real injury the plaintiffs have sustained from the death of the child. This you will not ascertain by inquiring what you would be willing to lose a child for. No amount of money would buy such willingness from a true-hearted father. If the picture of a loved friend be destroyed wrongfully, the measure of damages is not the price which affection would set upon it. The pecuniary value of affection is not to be estimated by legal scales.

I instruct you, *secondly*, that nothing can be allowed as a solace for the distress and anguish which you may suppose the plaintiffs suffered in consequence of the misfortune of their child. Great as that may have been, it is incapable of appreciation, or of any legal estimate. Every legal wrong, even the non-payment of debt, when it becomes due, inflicts inconvenience, often distress, upon the party injured, but this is not generally an element in the estimation of damages.

These parents are, however, entitled to compensation for any

expenses to which they have been subjected in consequence of the death of the child, and such you should give them. There is no direct evidence in regard to such expenses, but you may infer from the facts of the case that they have been incurred, and whatever you believe from the evidence that they were, should be included in your verdict. You will recollect that from the evidence it appears that the plaintiffs have already received one hundred and six dollars.

You will also include in your estimate of the damages, the loss which these plaintiffs have sustained of the services of their daughter Catharine, at least until she would have arrived at the age of twenty-one years. She was in her fifteenth year. The father being bound to support and educate the child, is entitled to the services of such child, to the earnings and the profits of the services, and these are a legitimate and proper subject for your consideration.

But beyond these considerations, the life of this child had a value, a pecuniary value, which you must endeavor to ascertain from the best lights that you have, and guided by a conscientious judgment. Upon this branch of the case I can give you very little assistance. In some respects, life is inestimable, against it, property, and even the world itself is not to be balanced. But the value of one's life to another is more susceptible of calculation. It is not to be made by annuity tables. In my judgment, a material consideration is, probably, the principal consideration—the loss of the comfort and satisfaction which flows from the society of the person in whose life the plaintiffs were interested. Of that comfort and enjoyment the negligence of the defendants has deprived them. This you may consider in your estimate of damages. Whatever was the estimable value of the life of Catharine, is for you to determine.

These, it seems then, gentlemen, are the elements—the different considerations which should address themselves to your consideration, in determining what amount of damages should be awarded.

The plaintiffs, however, claim exemplary damages, and upon this I have a few observations to make.

In all actions, the general rule is compensation. The object of the law is to make the injured party whole; to give him an equivalent in money for the right of which he has been deprived. By his

suit he asks satisfaction, and he asks no more. But in cases where the defendant has been guilty of fraud or malice, or oppression, or negligence, so gross as to be equivalent to wanton or willful injury, and which, therefore, is malicious, a jury may go beyond compensation. This is not because the plaintiff is entitled to any thing more than will make him whole, but because the law, in this indirect way, seeks to punish the offender, and set an example, a beacon before the community, to warn against the commission of similar offences. I will not say to you that you may not, in this case, go beyond compensation, and give exemplary damages, but I feel it my duty to say that, in my opinion, you should not. This is not a case of fraud, nor of malice, nor of oppression, nor do I think it is a case of reckless negligence.

The defendants, personally, were guilty of no negligence at all. They were compelled to act through agents. The uncontradicted evidence is that they appointed competent, skillful and prudent engineers and conductors. They gave to them most rigid instructions; instructions which, if they had been obeyed, would have prevented the possibility of such an accident as occurred. From some cause, it is unnecessary to determine what, these instructions were not literally obeyed, and the consequence was the fearful disaster which has occasioned this suit. The defendants, after all, are the greatest sufferers. They could have done no more than they did, to avert the calamity. It is hardly to be supposed, that the conductors and engineers wantonly exposed their own lives, as well as the lives of those under their care. I cannot see in all this, proof of such gross negligence as is evincive of a heart regardless of social duty; a bad heart, deserving to be held up to the community as an example of evil doing. This is, however, for you.

I have no more to say. You will take the case, and, guided by the principles which I have stated, assess the damages for the plaintiffs.

The jury found for the plaintiff $400.[1]

[1] To this charge both the plaintiff's and defendants' counsel excepted. The plaintiff also moved for a new trial. Should the Court in Banc pass upon the legal questions involved in this charge, we shall present the opinion to our readers.—*Eds. Am. Law Reg.*